



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 17-351; DA 18-11]

Auction of FM Translator Construction Permits Scheduled for June 21, 2018; Comment Sought on Competitive Bidding Procedures for Auction 83

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: In this document, the Wireless Telecommunications and Media Bureaus (the Bureaus) announce an auction of certain FM translator construction permits. This document also seeks comment on competitive bidding procedures and proposed minimum opening bids for Auction 83.

DATES: Comments are due on or before February 6, 2018, and reply comments are due on or before February 13, 2018. Bidding for FM translator construction permits in Auction 83 is scheduled to begin on June 21, 2018.

ADDRESSES: Interested parties may submit comments in response to the Auction 83 Comment Public Notice by any of the following methods:

- FCC's Web Site: Federal Communication Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, or audio format), send an e-mail to

FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For detailed instructions for submitting comments, see the **SUPPLEMENTAL INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Lynne Milne in the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division at (202) 418-0660. For general auction questions, the Auctions Hotline at (717) 338-2868. For FM translator service rule questions, James Bradshaw, Lisa Scanlan or Tom Nessinger in the Media Bureau's Audio Division at (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document (Auction 83 Comment Public Notice) in AU Docket No. 17-351, DA 18-11, released on January 16, 2018. The complete text of this document, including any attachment, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The Auction 83 Comment Public Notice and related documents also are available on the Internet at the Commission's website: <http://wireless.fcc.gov/auctions/83/>, or by using the search function for AU Docket No. 17-351 on the Commission's ECFS web page at <http://www.fcc.gov/cgb/ecfs/>.

All filings in response to the Auction 83 Comment Public Notice must refer to AU Docket No. 17-351. The Bureaus strongly encourage interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: auction83@fcc.gov.

Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://apps.fcc.gov/ecfs>. Follow the instructions for submitting comments.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

I. BACKGROUND

1. On February 6, 2003, the Bureaus announced an auction filing window for non-reserved band (Channels 221 to 300) applications for new FM translator stations and major modifications to authorized FM translator facilities. By Public Notices released May 21, 2013 and April 30, 2014, the Bureaus provided a list of all applications received during the filing window that were mutually exclusive (MX) with other applications submitted in the filing window. Applicants were previously given the opportunity to eliminate their mutual exclusivity with other applicants' engineering proposals by settlement or technical modification to their proposals.

II. CONSTRUCTION PERMITS IN AUCTION 83

2. Auction 83 will resolve groups of pending mutually exclusive applications for commercial FM translator construction permits. Competitive bidding will be used to select winning bidders for up to 43 new FM translator permits. A list of those pending groups of mutually exclusive applications is identified in Attachment A of the Auction 83 Comment Public Notice. Attachment A also lists proposed minimum opening bids and upfront payment amount for each construction permit.

3. An applicant listed in Attachment A may become qualified to bid only if it meets the additional filing, qualification and payment requirements, and otherwise complies with applicable requirements. Each applicant may become a qualified bidder only for those constructions permits specified for that applicant in Attachment A to the Auction 83 Comment Public Notice. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Under the Commission's established precedent, because mutual exclusivity exists for auction purposes, once "mutually exclusive applications are accepted," even if only one applicant for a particular construction permit becomes qualified to bid, that applicant must submit a bid in order to be eligible to obtain that construction permit. The Bureaus seek comment on whether, in the event the Commission determines to apply to Auction 83 applicants the changes made since 2003 to Section 1.2105 of the auction rules described in paragraphs 9 – 11 of the Auction 83 Comment Public Notice, the Bureaus can or should apply a different approach in this unique context.

III. REMEDIAL FILING WINDOW FOR FCC FORMS 175

4. Applicants listed in Attachment A previously filed short-form applications (FCC Forms 175). The Bureaus, in a future public notice, will specify procedures and announce a

filing window for updating Auction 83 applicants' Forms 175. During this remedial filing window, each applicant seeking to become qualified to participate in bidding must make any updates to information submitted in its application that may be needed, whether to reflect new or revised information pursuant 47 CFR 1.65, to comply with requirements of the FCC auction application system or to address other requirements of the Commission's competitive bidding rules, including amendments to those rules that may have been adopted subsequent to Auction 83 applicants' initial submissions, such as those changes required to be reported pursuant to sections 1.65 and 1.2105 of the Commission's rules. If an applicant fails to update its FCC Form 175 during the upcoming remedial filing window, it will be disqualified from further participation in Auction 83.

IV. BUREAUS SEEK COMMENT ON PROCEDURES FOR PENDING

APPLICATIONS

5. Auction 83 applicants initially filed their short-form auction applications and Form 349 tech box proposals in 2003. Since those applications were filed, the Bureaus have undertaken significant engineering analysis to determine mutual exclusivity among over 13,000 tech boxes that were initially filed. In the intervening period, the Commission has also amended its Part 1 competitive bidding rules several times. In general, each Commission auction is subject to the current Commission's Part 1 competitive bidding rules, including any amendments that may be adopted after the initial filing of an application. In light of the many years during which the Auction 83 applicants' short-form applications have been pending, the Bureaus seek comment on whether certain aspects of the current rules governing auctions should be waived to account for regulatory and business changes that have occurred since these applications were filed in 2003.

6. *Prohibition on Major Changes.* The Bureaus seek comment on whether to waive section 1.2105(b)'s prohibition on major changes with respect to transfers of control or assignments that have occurred to date and/or that have been subject to Commission review and approval by a particular date. Section 1.2105(b)(2) provides that an auction applicant that undertakes a major change, including a change of ownership that would constitute an assignment or transfer of control, after the short-form application deadline will be disqualified from participating in bidding. This rule applies uniformly to auction applicants, including in broadcast auctions. As noted in the recent broadcast television spectrum incentive auction, this prohibition assures that "relevant parties are identified to the Commission prior to the auction" and that the representations and certifications in the application "remain effective and enforceable" while the application is pending. Further, preventing significant changes in the ownership of an applicant after the short-form application deadline assures that all applicants have consistent and transparent information about the identity of other applicants and, by leveling the informational playing field enhances competition in the auction. Accordingly, the bar on major modifications prevents an applicant entity from engaging in an assignment or transfer of control from the short-form deadline until after the auction closes. For Auction 83, this prohibition has already been in effect for more than 14 years, and will not be lifted before the passage of at least another six months.

7. Two Auction 83 applicants whose ultimate parent corporation had consummated a transfer of control pursuant to authorization granted by the Commission in 2008 have sought waiver of section 1.2105(b)(2)'s bar on major modifications. Absent a waiver, the rule would require the dismissal of those applicants' short-form applications. The Bureaus seek comment on whether good cause exists to grant this request for waiver. Moreover, other Auction 83

applicants may have changed ownership or control since 2003 for operational or other business reasons entirely unrelated to the FM translator construction permits that they are seeking in Auction 83. Are there circumstances that would justify waiver of this rule for Auction 83 applicants? Should any such waiver be limited to certain transfers of control or assignments (e.g., that have occurred to date; that were subject to Commission review and approval by a particular date; and/or that were consummated pursuant to an assignment or transfer of control involving all, or substantially all, of the assets of the applicant or its parent and which involve multiple licenses)?

8. *Prohibitions on Joint Bidding Agreements, on Separate Auction Applications By Commonly Controlled Entities, and on Certain Communications.* Under section 1.2105(a), as revised in 2015, each auction applicant must certify that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party, and must certify that it (or any party that controls or is controlled by it) has not entered and will not enter any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with any other applicant for the auction, among others. Consistent with this prohibition, the Commission also revised section 1.1205(a)(3) to prohibit the filing of more than one short-form auction application by any one entity or individual, or by multiple entities that have a controlling interest in common, and provided that if applications were filed by entities with overlapping controlling interests at most, only one of the applicants could become qualified to bid. For purposes of this prohibition, 47 CFR 1.2105(a)(4) defines controlling interest to include individuals or entities with de jure or de facto control. In 2015, the Commission also revised the rule prohibiting certain communications, section 1.2105(c), to prohibit a communication of bids or bidding strategies

between all applicants for an auction.

9. At the time Auction 83 applications were initially filed, section 1.2105 did not prohibit joint bidding agreements or the filing of separate auction applications by entities with overlapping controlling interests. The rule required, as it does now, the disclosure of any such agreement and identification of all parties to it. In addition, the section 1.2105(c) prohibition on certain communications applied only to a communication of bids and bidding strategies between auction applicants for construction permits in any of the same geographic license, areas, with an exception for applicants that had identified each other on their Forms 175 as parties with whom they had entered into agreements pursuant to section 1.2105(a)(2)(viii). For purposes of this prohibition, both former section 1.2105(c)(7)(i) and current section 1.2105(c)(5)(i) define applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. Further, in applying the prohibited communications rule, the Bureaus have found that, where an individual served as an officer and director for two or more applicants subject to the rule, the bids and bidding strategies of one applicant are presumptively conveyed to the other applicant. Accordingly, the Bureaus determined under the former rule that, absent a disclosed bidding agreement between such applicants, an apparent violation of section 1.2105(c) would occur.

10. The Bureaus anticipate that some Auction 83 applicants and their pending applications may not be in compliance with the current provisions of section 1.2105. In light of the passage of time since the Auction 83 application filing deadline in 2003, the rule revisions

that have become effective, and the business changes that applicants any applicants have undergone, the Bureaus seek comment on whether waiver of certain provisions of section 1.2105 to allow applicants to bring their applications into compliance with the current competitive bidding rules would serve the underlying purposes of these current prohibitions better than strict enforcement under these circumstances. If so, how might applicants bring themselves into compliance with current requirements during the upcoming remedial filing window? For example, if any Auction 83 applicants are under common control, should the Bureaus require such applicants to participate through a single bidding entity by filing a single application covering all of the MX engineering proposals applied for by the separate commonly controlled applicants? If so, should the Bureaus adopt specific procedures for the remedial filing window that would allow such Auction 83 applicants to come into compliance with current competitive bidding rules and requirements? Under this approach, the Bureaus propose that any commonly controlled applicants that combine their applications for purposes of bidding would be able to apply separately post-auction for construction permits. As an alternative, if any Auction 83 applicants have overlapping controlling interests, should the Bureaus allow separate auction applications from Auction 83 applicants that are under common control? If so, how would the Bureaus address the issue of a prohibited communication of bidding-related information by shared officers or directors of Auction 83 applicants? To the extent any Auction 83 applicant may have previously entered into an arrangement that is now prohibited under section 1.2105's prohibition on joint bidding agreements, what steps could such parties take to bring themselves into compliance with current rules without implicating the concerns that led the Commission to adopt the new rule? How should the Bureaus address the potentially continuing effects of any previously negotiated arrangement relating to joint bidding that was

disclosed consistently with our prior rules? Irrespective of any waiver, should the Bureaus presume, absent affirmative evidence to the contrary, that any communications that may have occurred due to a shared director and officer during the more than ten years the initial applications have been pending prior to the remedial filing window did not involve bids or bidding strategies for purposes of applying the prohibition? Commenters are encouraged to identify any particular circumstances of this auction that should guide us in developing application procedures under the competitive bidding rules now in effect, including the lengthy pendency of the auction applications, specific aspects of the auction application process and processing procedures, limitations on eligibility to bid on specific permits in this closed auction, the nature of the permits to be awarded, or any other relevant considerations. Pursuant to 47 CFR 1.3 and 1.925, commenters favoring waiver of any rule should focus in particular on whether the underlying purpose of the rule would be served by its application in this case.

V. UPDATES TO APPLICATION OUTSIDE OF FILING WINDOWS

11. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. See also 47 CFR 1.2105(b), (c).

12. If information needs to be submitted pursuant to sections 1.65 or 1.2105 outside of the initial, remedial, or resubmission windows in Auction 83, the applicant must submit a letter briefly summarizing the changes by email to auction83@fcc.gov. Such email must include a subject or caption referring to Auction 83 and the name of the applicant.

VI. BUREAUS SEEK COMMENT ON BIDDING PROCEDURES

13. The Bureaus, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in Auction 83.

A. Auction Structure

14. *Simultaneous Multiple Round Auction Design.* The Bureaus propose using the Commission's standard simultaneous multiple-round auction format for Auction 83. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

15. *Bidding Rounds.* Auction 83 will consist of sequential bidding rounds, each followed by the release of round results. The Commission will conduct Auction 83 over the Internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line.

16. The Bureaus propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

17. *Stopping Rule.* To complete the auction within a reasonable time, the Bureaus propose to employ a simultaneous stopping rule approach for Auction 83, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding would close on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or, if bid withdrawals are permitted in this auction, withdraws any provisionally winning bid which is a bid that would become a final winning bid if the auction were to close in that given round. Thus, unless the Bureaus announce alternative procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

18. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 83. (1) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bid on a construction permit for which it is not the provisionally winning bidder, which means that, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bid on a construction permit that already has a provisionally winning bid, which means that, absent any other bidding activity, a bidder placing

a new bid on an FCC-held construction permit (a construction permit that does not already have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

(3) Use a modified version of the simultaneous stopping rule that combines options (1) and (2).

(4) The auction would close after a specified number of additional rounds (special stopping rule) to be announced by the Bureaus. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close. (5) The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

19. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

20. *Auction Delay, Suspension or Cancellation.* Pursuant to 47 CFR 1.2104(i), the Bureaus propose that they may delay, suspend, or cancel bidding in Auction 83 in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureaus will notify participants of any such delay,

suspension or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If bidding is delayed or suspended, the Bureaus may, in their sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

21. *Upfront Payments and Bidding Eligibility.* The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. The upfront payment is a refundable deposit made by an applicant to establish eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. With these considerations in mind, the Bureaus proposed the upfront payments set forth in Attachment A of the Auction 83 Comment Public Notice. The Bureaus seek comment on the upfront payments specified in Attachment A of the Auction 83 Comment Public Notice.

22. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureaus propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the Auction 83 Comment Public Notice.

The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit in Auction 83, such a bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureaus request comment on these proposals.

23. *Activity Rule.* In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 100 percent of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level would result in the use of an activity rule waiver, if any, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Bureaus seek comment on this proposal.

24. *Activity Rule Waivers and Reducing Eligibility.* When a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility

through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

25. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

26. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the specified activity requirement. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

27. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder

proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there are no new bids, no bid withdrawal (if bid withdrawals are permitted in this auction), or no proactive waiver will not keep the auction open.

28. The Bureaus propose that each bidder in Auction 83 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

29. *Reserve Price or Minimum Opening Bids.* Normally, a reserve price is an absolute minimum price below which a construction permit will not be sold in a given auction. The Bureaus do not propose to establish separate reserve prices for the Auction 83 construction permits.

30. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. Because it is an effective tool for accelerating the competitive bidding process, the Bureaus propose to establish minimum opening bid amounts for Auction 83 determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. Attachment A of the Auction 83 Comment Public Notice lists a proposed minimum opening bid amount for each construction permit available in Auction 83. The Bureaus seek comment on the minimum opening bid amounts specified in Attachment A of the Auction 83 Comment Public Notice.

31. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. The Bureaus ask commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on bidders' valuation of the broadcast spectrum, including the type of service offered, market size, population covered by the proposed broadcast facility, and any other relevant factors.

32. *Bid Amounts.* The Bureaus propose that, if the bidder has sufficient eligibility to place a bid on a particular construction permit in a round, an eligible bidder will be able to place a bid on that construction permit in any of up to nine different amounts. Under this proposal, the FCC auction bidding system interface will list the acceptable bid amounts for each construction permit.

33. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. The percentage used for this calculation, the minimum acceptable bid increment percentage, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10 percent, then the provisionally winning bid amount is multiplied by 10 percent. The result of that calculation is

added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

34. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result rounded is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5 percent, then the calculation of the additional increment amount is (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2 *(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3 *(additional increment amount)); etc. The Bureaus will round the results using the Commission's standard rounding procedures for auctions.

35. For Auction 83, the Bureaus propose to use a minimum acceptable bid increment percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid

amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus proposed to use an additional bid increment percentage of 5 percent. The Bureaus seek comment on these proposals.

36. The Bureaus propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction-permit-by-construction-permit basis. The Bureaus also propose to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction. The Bureaus seek comment on these proposals

37. *Provisionally Winning Bids.* Provisionally winning bids are bids that would become winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC auction bidding system will determine a provisionally winning bid for each construction permit based on the highest bid amount received. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round.

38. The auction bidding system assigns a pseudo-random number to each bid when the bid is entered. If identical high bid amounts are submitted on a construction permit in any given round (i.e., tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

39. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). The Bureaus remind bidders that provisionally winning bids count toward a bidder's activity level for purposes of the activity rule.

40. *Bid Removal and Bid Withdrawal.* For Auction 83, the Bureaus propose the following bid removal procedures. The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid

placed within a round, a bidder effectively unsubmitted the bid. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder is no longer permitted to remove a bid. The Bureaus seek comment on this bid removal proposal.

41. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 83. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the withdraw function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted in this auction, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109.

42. Based on the nature of the permits available in Auction 83 and on the experience of the Bureaus with past auctions of broadcast construction permits, the Bureaus propose to prohibit bidders from withdrawing any bid after the close of the round in which the bid was placed. The Bureaus make this proposal in light of the site- and applicant-specific nature and wide geographic dispersion of the permits available in this closed auction, which suggests that potential applicants for this auction will have limited opportunity to aggregate construction permits through the auction process because of the closed MX groups previously established. Thus, the Bureaus believe that it is unlikely that bidders will have a need to withdraw bids in this auction. Also, allowing bid withdrawals may encourage insincere bidding or increase opportunities for anti-competitive bidding in certain circumstances. The Bureaus also remain mindful that bid withdrawals, particularly those made late in this auction, could result in delays in licensing new FM translator stations and attendant delays in the offering of new broadcast

service to the public. The Bureaus seek comment on their proposal to prohibit bid withdrawals in Auction 83.

C. Post-Auction Payments

43. *Interim Withdrawal Payment Percentage.* A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

44. The amount of the interim bid withdrawal payment may range from three to 20 percent of the withdrawn bid amount. If bid withdrawals are allowed in Auction 83, the Bureaus propose that the interim bid withdrawal payment be 20 percent of the withdrawn bid. The Bureaus request comment on using 20 percent for calculating an interim bid withdrawal payment amount in Auction 83. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

45. *Additional Default Payment Percentage.* Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment equal to the difference

between the amount of the Auction 83 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

46. Based on the nature of the service and the construction permits being offered, the Bureaus propose for Auction 83 an additional default payment of 20 percent of the relevant bid. The Bureaus seek comment on this proposal.

VII. TUTORIAL AND ADDITIONAL INFORMATION FOR AUCTION 83 APPLICANTS

47. The Bureaus intend to provide educational opportunities for applicants to familiarize themselves with the FCC auction application system and the auction bidding system.

VIII. SUPPLEMENTAL REGULATORY FLEXIBILITY ANALYSIS

48. The Regulatory Flexibility Act of 1980 (RFA) requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act, 5 U.S.C. 601(3). According to the Small Business Act, 15 U.S.C. 632, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

49. The Auction 83 Comment Public Notice seeks comment on proposed procedures to govern Auction 83, an auction of up to 43 commercial FM translator construction permits, and on proposed procedures for processing pending Auction 83 applications. This process is

intended to provide notice of and adequate time for potential applicants to comment on proposed application processing and auction procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 83 participants, including small businesses, the Bureaus seek comment on the following: (1) Whether certain aspects of the rules governing auction applications, including the prohibitions on major changes and on certain communications as well as the rules governing bidding-related agreements including the current prohibition on joint bidding arrangements, should be waived to account for regulatory and business changes that have occurred since Auction 83 applications were filed in 2003; (2) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with Bureau discretion to exercise alternative stopping rules under certain circumstances); (3) A specific minimum opening bid amount for each construction permit available in Auction 83; (4) A specific upfront payment amount for each construction permit; (5) Establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating; (7) A single stage auction in which a bidder is required to be active on 100 percent of its bidding eligibility in each round of the auction; (8) Provision of three activity rule waivers for each bidder to allow it to preserve bidding eligibility during the course of the auction; (9) Use of minimum acceptable bid amounts and additional acceptable amounts, along with a proposed methodology for calculating such amounts, with the Bureaus retaining discretion to change their methodology if circumstances dictate; (10) A procedure for breaking ties if identical high bid amounts are submitted on a permit in a given round; (11) Bid removal procedures; (12) Whether to permit bid withdrawals;

(13) Establishment of an interim bid withdrawal percentage of 20 percent of the withdrawn bid in the event the Bureaus allow bid withdrawals in Auction 83; and (14) Establishment of an additional default payment of 20 percent under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

50. The specific procedures and minimum opening bids on which comment is sought in this Public Notice will affect all applicants participating in Auction 83. Any revisions to application procedures for pending Auction 83 applications would affect only those entities that are commonly controlled, or that underwent a major change of ownership or control after the short-form application deadline. Auction 83 is a closed auction, and only the 57 separate entities listed in Attachment A to the Auction 83 Comment Public Notice may become qualified to bid. U.S. Census data for 2012 show that 2,849 radio station firms operated during that year. Because the proposed procedures would affect a maximum of 57 radio station firms, or approximately two percent of the total, some of which are not small entities, the Bureaus found that no substantial number of small entities would be affected by the proposed procedures or minimum opening bid amounts. Therefore, the Bureaus certify that the proposed procedures and minimum opening bid amounts for Auction 83 will not have a significant economic impact on a substantial number of small entities.

IX. EX PARTE RULES

51. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. While additional information is provided in the Auction 83 Comment Public Notice on these reporting requirements, participants in Auction 83 should familiarize themselves with the Commission's *ex parte* rules.

FEDERAL COMMUNICATIONS COMMISSION.

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